SUPREME COURT U. S.

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IN THE

Supreme Court of the United States

Term, 1969

No. 474

THE PEOPLE OF THE STATE OF NEW YORK,
Respondent-Appellee,

vs.

MELVIN KRAFT,
Defendant-Appellant.

ON APPEAL FROM A CERTIFICATE DENYING LEAVE TO APPEAL TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

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THE REPORTER COMPANY, INC., Walton, N. Y. 13856—607 865-4131—1969

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MELVIN KRAFFT,

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ON APPEAL FROM A CERTIFICATE DENYING LEAVE TO APPEAL TO THE COURT OF APPEALS OF THE STATE OF NEW YORK.

JURISDICTIONAL STATEMENT.

Defendant-appellant appeals from a certificate denying leave to appeal to the Court of Appeals of the State of New York, pursuant to Section 520 of the Code of Criminal Procedure of the State of New York, said certificate being dated May 18, 1969, and the defendant-appellant submits this statement to show that the Supreme Court of the United States has jurisdiction of this appeal and that a substantial question is presented.

Opinion Below.

The opinion of the County Court of the County of Onondaga, State of New York, was not reported: that

opinion is attached hereto as Appendix A. The certificate denying leave to appeal to the Court of Appeals was not reported: a copy of that certificate is attached hereto as Appendix B.

Jurisdiction.

The notice of appeal was filed in the County Court of the County of Onondaga, State of New York, on June 17, 1969. The jurisdiction of the Supreme Court to review this decision by direct appeal is conferred by Title 28, U. S. C. Section 1257 (2).

The Statute Involved.

This appeal involves the validity of Section 381 (6) of the Vehicle and Traffic Law of the State of New York, which provides:

> "It shall be unlawful, on and after January 1, 1967, for any person to operate or ride upon a motorcycle unless he wears a protective helmet of a type approved by the commissioner. Such a helmet must be equipped with either a neck or chin strap and be reflectorized on both sides thereof. The commissioner is hereby authorized and empowered to adopt and amend regulations covering the types of helmets and the specifications therefor and to establish and maintain a list of approved helmets which meet the specifications as established hereunder. The police authorities of a city, town or village may issue a permit exempting members of organizations sponsoring or conducting parades or other public exhibitions from the provisions of this subdivision while such members are participating in such parades or other public exhibitions" (McKinney's Consolidated Laws of New York, Volume 62A, Cumulative Annual Pocket Part, 1968-69, p. 67).

Question Presented.

Is a statute requiring a motorcyclist to wear a helmet a valid exercise of the police power of the State in protecting the public welfare, or is it an unreasonable infringement of individual liberty in the right to wear whatever one chooses, so long as that action affects no one but the individual himself?

Statement.

On May 14, 1967, the defendant was issued a traffic summons for violating Section 381 §6 of the Vehicle and Traffic Law of the State of New York, specifically:

> "Operating a motorcycle without a protective helmet."

On June 7, 1968, the defendant appeared in Justice Court in the Town of DeWitt, County of Onondaga and State of New York, and admitted that he wore no protective helmet, as required by the statute, but, though his attorney challenged the constitutionality of the statute, on the grounds that the statute represented an improper and over-reaching use of the police power, resulting in undue infringement on the constitutional guarantees of personal liberty and the rights to the free use of an individual's property. Thus, the defendant argued, the statute violated both the State and Federal Constitutions. The Justice of the Peace held that the statute was constitutional and fined the defendant Ten Dollars.

The defendant duly appealed to the County Court of the County of Onondaga, State of New York, on the grounds that the statute violated both the Federal and State Constitutions.

In the decision of Onondaga County Court Judge Albert Orenstein, dated March 4, 1969, the statute was

held constitutional, and an order to that effect was entered on March 12, 1969.

The defendant, pursuant to Section 520 of the Code of Criminal Procedure of the State of New York, next sought leave to appeal to the Court of Appeals and on May 18, 1969, a certificate denying leave to appeal to the New York State Court of Appeals was signed by Honorable Francis Bergan, Associate Judge of the Court of Appeals of the State of New York.

The Question is Substantial.

There is only one issue involved on this appeal, and that is, whether a State statute can require a motorcyclist to wear a helmet as a valid exercise of the police power of the State in protecting the public welfare, or whether such a statute is an unreasonable infringement of individual liberty in the right to wear whatever one chooses, so long as that action protects no one but the individual himself.

It is settled constitutional doctrine that the State's police power can be properly exercised only when there is a reasonable relationship to the public health, safety, morals, or welfare.[1] On the other hand, if the Court can find no relationship between the statute and the public health, safety, morals, or welfare, the statute is unconstitutional.[2] If there is no benefit flowing to the public from the enforcement of a statute which restricts individual freedom, there is a denial of liberty without due process of law.[3]

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[1]See, *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937); *VanOster v. Kansas*, 272 U. S. 465 (1926); *Pacific Gas Co. v. Police Ct.*, 251 U. S. 22 (1919).

[2]See, *Griswold v. Connecticut*, 381 U. S. 479, (1965).

[3]See, *Pierce v. Society of Sisters*, 268 U. S. 510 (1925); *Meyer v. Nebraska*, 262 U. S. 390 (1923); *Fairmont Creamery Co. v. Minnesota*, 274 U. S. 1 (1927); *Atkin v. Kansas*, 191 U. S. 207 (1903).

Motorcycle expansion during the last ten years has been tremendous, and the cycle is now widely accepted as a means of economical transportation, as well as exciting recreation. Motorcycle registration increased from one-half million in 1960 to almost two million in 1967.[4]

In 1966 Congress authorized the Federal Government to commence a major program to increase highway safety. Basic to this campaign was the Highway Safety Act, which established a three-year Federal Highway Safety Program and required the formation of similar programs on the state level.[5] Congress provided that failure by any state to implement an approved program by December 31, 1968, would terminate all Federal Funds for the program and reduce the state's Federal Highway Appropriation by ten per cent. The National Highway Safety Bureau was charged with implementing the Highway Safety Program and one of the Bureau's initial proposals was to make the wearing of protective helmets by motorcycle riders mandatory. The proposal was incorporated by Congress into the National Uniform Standards for Highway Safety Programs.[6] The states, thinking perhaps both of safety and the threatened loss of highway funds, were induced to adopt helmet legislation. Presently, thirty-four states require the wearing of motorcycle helmets and two states require that they be carried with the cycle as equipment, but need not be worn.

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[4]Motorcycle registrations in 1960 numbered 575,500. *U. S. Bureau of Census, Statistical Abstract of the United States*: 1961, at 559 (82d ed. 1961). The number registered in 1967 was 1,953,000. *U. S. Bureau of Census, Statistical Abstract of the United States*: 1968, at 553 (89th ed. 1968).

[5]Highway Safety Act of 1966, 23 U. S. C. A. §§401-404 (Supp. 1967).

[6]H. R. Doc. No. 138, 90th Cong., 1st Sess. 2-3 (1967) states: The program shall provide as a minimum that: each motorcycle operator wears an approved safety helmet * * * each motorcycle passenger wears an approved safety helmet * * *.

These helmet statutes have produced much litigation challenging their constitutionality, on the grounds that the judicial limits of the police power of the state have been exceeded and that, under our system of Constitutional Government, there is some fundamental point at which the individual, himself, can decide what course of conduct he will follow in his own protection, wherein that course of conduct affects no one but the individual. The highest Courts in the states of Michigan, Illinois and Louisiana have held helmet statutes unconstitutional.[7] The highest Courts in Rhode Island and Massachusetts have held the statute valid.[8] All cases concerning the statute were decided on the same constitutional grounds presented in this case.

The Courts which have declared the helmet statutes unconstitutional have been unable to find a sufficient relationship between the helmet requirement and the welfare of the community at large. The Michigan Court felt the statute was only a protection of the cyclist himself from severe head injuries and that any other interpretation was a strained effort to justify what is admittedly wholesome legislation.[9] The Louisiana Court declared that the only function of the helmet requirement was to minimize the extent of injury to the individual cyclist and did not contribute to the safety of the motoring public at large.[10] The Illinois Court said:

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[7] *American Motorcycle Association v. Davids*, 9 Mich. App. 655, 158 N. W. 2d 72 (Ct. App. 1968); *The People of the State of Illinois v. Donald Fries*, Illinois Supreme Ct. Docket No. 41624, Agenda—17, March, 1969 (Citation unavailable at this time); *Everhardt v. City of New Orleans*, 208 So. 2d 423 (La. Ct. App. 1968).

[8] *State ex rel. Colvin v. Lombardi*, 241 A. 2d 625 (1968); *Commonwealth v. Howie* (Mass.), 238 N. E. 2d 373 (1968).

[9] *American Motorcycle Association v. Davids*, 158 N. W. 2d 72 (1968).

[10] *Everhardt v. City of New Orleans*, 208 So. 2d 423 (La. Ct. App. 1968).

> "The manifest function of the headgear requirement in issue is to safe-guard the person wearing it—whether it is the operator or passenger—from head injuries. Such a laudable purpose, however, cannot justify the regulation of what is essentially a matter of personal safety."[11]

On the other hand, those Courts which have upheld the helmet statutes advance various arguments to support the necessary relationship to the public welfare. The two main arguments in support of the statute are that it is in the interest of the State to have a strong, robust, healthy citizenry capable of self-support and adding to the resources of the country and that as long as the means are reasonable the Legislature can protect individuals from themselves to further that interest, and, secondly, that the crash helmet would prevent accidents caused by cyclists who lose control of their machines because of being struck in the head by flying objects.

With respect to the New York statute, it is clear what the Legislature had in mind, as evidenced by a legislative memorandum which cited an extensive study showing that most motorcycle fatalities could have been avoided by wearing the proper helmet.[12] It is clear,

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[11] *The People of the State of Illinois v. Donald Fries*, Illinois Supreme Ct. Docket No. 41624, Agenda—17, March, 1969 (Citation unavailable at this time).

[12] See, *New York Session Laws*, 2961 (McKinney 1966) (Citing the results of that study): The number of accidents involving motorcycles is increasing rapidly. In fact motorcycle accidents increased by 105% in 1965, as compared to 1964 * * * fatalities increased by 63.6% and personal injury accidents by 100%. A summary of the department's statistics indicates that 89.2% of the motorcycle accidents result in injury or death and that almost all fatalities occurring as a result of such accidents involve head injuries. Most of these fatalities could have been avoided, or the severity lessened, by the use of a proper helmet.

The helmet requirement, continues the memorandum, "Should go far in protecting the *drivers and passengers* on motorcycles" *Id.* (Italics supplied.)

then, that the New York State statute as evidenced by the legislative intent, is solely to protect the cyclist and his passenger. While the study adequately demonstrates that helmets prevent individual cyclists from being injured, there is no evidence to show that the use of helmets has ever prevented the occurrence of an accident. It is clear, therefore, that the New York statute is aimed at protecting the motorcycle driver and his passenger.

There is no question that it is a good idea for the motorcyclist and his passenger to wear protective headgear, as its value is generally recognized. Whether the State can impose penal sanctions for failure to wear a helmet is another question. To be sure, some degree of government control is necessary if we are to have safety on the highways. However, in this case, the traditional limits of the police power have been unjustifiably overextended in a strained attempt to achieve what is admittedly wholesome legislation.

The police power of the State is the least limitable powers of government, because it is used to protect the public welfare. However, it is settled constitutional doctrine that the State's police power can be properly exercised only when there is a reasonable relationship to the public health, safety, morals or welfare.[13] The time honored maxim:

"*Sic utere tuo ut alienum non laedas*" (so use your own that you do not injure that of another) has been the basis of the police power. The application of this rule has limited the police power to instances where one individual's conduct adversely affected others. The helmet statute in its present form represents an extension of the limits of the police power to include the

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[13] *West Coast Hotel Co. v. Parrish*, 300 U. S. 379 (1937); *VanOster v. Kansas*, 272 U. S. 465 (1926); *Pacific Gas Co. v. Police Ct.*, 251 U. S. 22 (1919).

regulation of an individual's conduct where he alone could be adversely affected.

The Onondaga County Court based its decision that the law was constitutional primarily on two reasons, first of all, that the use of the public highways is a privilege and not a right, and, therefore, is subject to regulation by the Legislature. The simple answer to this is that even though the use of the highways may be only a conditional privilege, subject to State control, it cannot exercise its power arbitrarily, and the Legislature must still determine that the public welfare is endangered and must reasonably exercise the police powers to meet that public need. The Court's second reason was that while concededly the statute may infringe the rights of the individual, that such infringement was incidental to a valid exercise of the police power and was not unreasonable. The Court in *American Motorcycle Association v. Davids*,[14] said that to allow this type of regulation was to open the door to an unlimited benevolent paternalism of government which would surely be inimical to a democratic way of life and our constitutionally protected liberties.

Respectfully submitted,

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[14] *American Motorcycle Association v. Davids* (Mass.), 158 N. W. 2d at 72.

APPENDIX A.

Memorandum-Opinion of Orenstein, J.

STATE OF NEW YORK, COUNTY COURT,

COUNTY OF ONONDAGA.

THE PEOPLE OF THE STATE OF NEW YORK

vs.

MELVIN KRAFFT.

Appearances:

Frank A. Gualtieri, Jr., Esq., District Attorney of Onondaga County, Jon K. Holcombe, Esq., of counsel, Attorney for the People.

Victor J. Ciabotti, Esq., Attorney for Defendant.

ORENSTEIN, J.:

Memorandum.

The defendant has appealed to this Court from a judgment of conviction for not wearing a protective helmet when operating a motorcycle on Route 5 within the Town of Dewitt, in violation of Section 381 (6) of the Vehicle and Traffic Law of the State of New York, rendered on June 7, 1968, by Hon. George J. Kimball, Town Justice of the Town of Dewitt, Court of Special Sessions, Onondaga County, State of New York.

Defendant was fined the sum of $10.00 and now appeals to this Court upon the ground that the following

statute "violates the constitution of the State of New York and the United States of America":

> "6. It shall be unlawful, on and after January first, nineteen hundred and sixty-seven, for any person to operate or ride upon a motorcycle unless he wears a protective helmet of a type approved by the commissioner. Such helmet must be equipped with either a neck or chin strap and be reflectorized on both sides thereof. The commissioner is hereby authorized and empowered to adopt and amend regulations covering the types of helmets and the specifications therefor and to establish and maintain a list of approved helmets which meet the specifications as established hereunder."

Specifically, defendant contends that the statute is: discriminatory; an improper delegation of authority to the Commissioner of Motor Vehicles; too indefinite to be enforceable and a violation of the Commerce Clause of the United States Constitution. Furthermore, defendant argues that the legislation authorizes "an unwarranted use of police power in conflict with the right of an individual in the proper and free use of his private property."

In a brief filed in opposition to the above contentions, the District Attorney submits that "The legislative purpose in adopting the subject statute is obviously to stem the flow of blood which has become so prevalent upon the public highways." Concluding in part that,

> "* * * the instant defendant derived his right to operate his motorcycle only by a license and it cannot be contested that the right to drive a motorcycle on public highways is not an absolute one but subject to regulation by the Legislature."

A review of the history and purpose behind the legislation in question led the Court in *People v. Carmichael*, 56 Misc. 2d 388, pages 390-391, to hold the statute constitutional, reasoning that:

> "* * * it is apparent that the challenged legislation requiring the wearing of a protective helmet for self-protection is a valid purpose of legislative action under the police power of the State. Indeed, the inherent danger of operating a motorcycle, not only to the driver but to other users of the highway, has likewise been considered in upholding the validity of this statute as a valid objective of the State's police power (*People v. Schmidt*, 54 Misc. 2d 702).
>
> "* * * While concededly the instant legislation may infringe on the rights of the individual, it is equally apparent that such is incidental to a valid exercise of the police power and is not unreasonable. When the sole object and general tendency of legislation is to promote public welfare there is no invasion of the Constitution even if enforcement of the law interferes to some extent with liberty or property (*Matter of Viemeister*, 179 N. Y. 235)."

Subdivision 6, Section 381 of the Vehicle and Traffic Law has also been held to be a reasonable exercise of police power of the state and constitutional in the following cases:

People v. Newhouse (1968), 55 Misc. 2d 1064;
People v. Bielmeyer (1967), 54 Misc. 2d 466.

The judgment appealed from is affirmed.
Submit order accordingly.

Dated: March 4, 1969

ALBERT ORENSTEIN
Onondaga County Judge

APPENDIX B.

Certificate Denying Leave.

COURT OF APPEALS,

STATE OF NEW YORK.

Before:

Hon. Francis Bergan, Associate Judge.

THE PEOPLE OF THE STATE OF NEW YORK,

Respondent,

against

MELVIN KRAFFT,

Defendant-Appellant.

I, FRANCIS BERGAN, Associate Judge of the Court of Appeals of the State of New York, do hereby certify that, upon application timely made by the above named appellant for a certificate pursuant to §520 of the Code of Criminal Procedure, and upon the record and proceedings herein, there is no question of law presented which ought to be reviewed by the Court of Appeals and permission to appeal is hereby denied.

Dated at Albany, New York
May , 1969.

FRANCIS BERGAN
Associate Judge